

Application No.: 10/849,972

Case No.: 59591US002

REMARKS

Upon entry of the present amendment, claims 1-15 and 17-26 will be pending. Claims 19-26 stand withdrawn. Claims 1-15 and 17-19 have been amended to recite that the three-dimensional textured article is a stair tread cover. Reconsideration of the pending claims is respectfully requested in view of the claim amendments and following remarks.

I. Claims 1-15, 17, and 18 are Not Obvious over Lux in view of Emerson et al.

Claims 1-15, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Lux (U.S. Pat. No. 5,928,070) in view of Emerson et al. (U.S. Pub. No. 2003/00226318). Applicant requests reconsideration of this rejection because Lux and Emerson et al. are non-analogous art and fail to teach or suggest a stair tread cover as recited in Applicant's claims.

Lux reports a low-density abrasive article having mullite abrasive particles. The abrasive article is preferably provided in the form of a disc adapted to be attached to right angle grinder or drill (column 3, lines 10-20).

Emerson et al. report a method for forming preformed abrasive articles having three dimensional shapes that are frequently used with grinders and powered right-angle tools (see, e.g., paragraph [0054]). The shape of the exemplary embodiments reported by Emerson et al. is referred to as "mushroom" shaped.

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor is involved. *In re Bigio*, 381 F.3d 1320, 72 U.S.P.Q.2d 1209 (Fed. Cir. Aug. 24, 2004); *In re Clay*, 966 F.2d 656, 659, 23 U.S.P.Q.2d 1058, 1060 (Fed. Cir. 1992). The amended claims of the present application are directed toward stair tread covers. As shown in FIG. 1, for example, the stair tread covers are used to cover a step and form a tread surface. The stair tread covers allow water and other fluids to flow away from the surface. Unlike the articles reported by Lux and Emerson et al., the stair tread covers of the present invention are not designed or configured to be adapted to a right angle grinder. One skilled in the art, aware of the substantial differences between stair tread covers and

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abrasive articles, would not expect that an abrasive article designed to be used with power tools could be used as a stair tread cover.

Since there is no reason to believe that those of ordinary skill seeking to develop stair tread covers would have been motivated to consult the abrasive arts, a *prima facie* case of obviousness has not been made. For at least this reason, Applicant respectfully request reconsideration and withdrawal of the rejection of claims 1-15, 17, and 18 under 35 U.S.C. § 103.

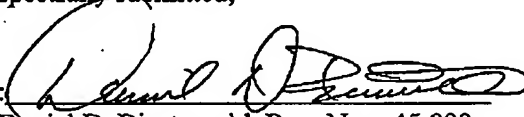
II. Conclusion

In view of the above, it is submitted that the application is in condition for allowance. Reconsideration of the application is requested.

Respectfully submitted,

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Date

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